

# HOUSE BILL REPORT

## HB 2813

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**As Reported by House Committee On:**  
Judiciary

**Title:** An act relating to shopping carts.

**Brief Description:** Changing provisions relating to shopping carts.

**Sponsors:** Representatives O'Brien, Williams, Strow and Kirby.

**Brief History:**

**Committee Activity:**

Judiciary: 1/27/06, 2/1/06 [DPS].

**Brief Summary of Substitute Bill**

- Changes the elements of the crime of removing a shopping cart;
- Provides a merchant with a defense against civil liability for detaining a person suspected of shopping cart removal;
- Allows a merchant to recover damages, plus penalties, fees and costs, from a person who removes a shopping cart; and
- Restricts a local government's ability to impound shopping carts.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Lantz, Chair; Flannigan, Vice Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Kirby, Serben and Wood.

**Staff:** Bill Perry (786-7123).

**Background:**

Removing or possessing a shopping cart is a misdemeanor crime. The crime of removing a shopping cart consists of removing a cart from the parking area of a store with the intent to deprive the owner of the use of the cart. The crime of possessing a shopping cart consists of possessing a cart that has been so removed.

These crimes apply only to shopping carts that have a sign on them that indicates the ownership of the cart, that provides notice regarding the crime of unauthorized removal, and that lists a phone number or address for returning the cart to the owner.

In some circumstances, merchants have been given statutory defenses and remedies for dealing with shoplifting and other thefts. Under one of these provisions, a shoplifter is liable to a merchant for:

- actual damages;
- a penalty in the amount of the value of the taken merchandise, not to exceed \$1,000;
- a penalty of at least \$100, but not more than \$200; and
- all reasonable attorney fees and court costs.

These civil penalty provisions also apply to persons who leave a restaurant without paying for food, or who leave a motel or hotel without paying for food or lodging. A conviction for theft is not necessary in order to enforce these civil remedies.

In addition, a merchant who detains a suspected shoplifter has a defense against a suit by the detained person if the detention was done in a reasonable manner for a reasonable time, and was based on reasonable grounds to believe the person was shoplifting.

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### **Summary of Substitute Bill:**

The crime of removing a shopping cart is changed. The crime no longer requires a showing of intent to deprive the owner of the use of the cart. Instead it requires a showing that the removal was intentional and without the owner's permission. The crime of possession of a shopping cart continues to require a showing of intent to deprive the owner of the use of the cart.

A merchant who detains someone suspected of shopping cart removal is given the same defense against civil liability that a merchant has for detaining a suspected shoplifter. A person who intentionally removes a shopping cart without permission is subject to the same civil penalties as a person who shoplifts.

Local ordinances dealing with shopping cart removal may allow impoundment of a cart only if the cart is off the premises of the merchant; and

- the owner is given notice of the cart's location and does not retrieve the cart within five days; or
- the cart is likely to impede emergency services (in which case, if the cart is impounded, the merchant must be notified of the impoundment); or
- the cart does not have the sign on it that is required for a conviction of the crime of shopping cart removal.

Local ordinances may not provide for an impound fee of more than \$50 per cart. No fee may be charged if the merchant retrieves the cart within five days of notice of impoundment. Impounded carts may not be disposed of within 30 days of impoundment. Disposal fees chargeable to the merchant may not exceed \$50 per cart. Notifications under this provision

may be made by using a statewide telephone number if one is ever established for that purpose.

**Substitute Bill Compared to Original Bill:**

The substitute bill makes grammatical and technical changes, including providing for the consistent use of terminology, clarifying that the crime of possession of a cart requires the intent to deprive the owner of the use of the cart, and clarifying that the bill preempts local ordinances but not other state statutes.

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**Appropriation:** None.

**Fiscal Note:** Preliminary available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** Local ordinances should be reasonable and uniform across the state. Merchants are frustrated with having to deal with the minute details of local ordinances and with the expense of complying with them. Merchants are the victims of a crime and then are victimized again by having to pay to get their own carts back. Police and prosecutors do not enforce the law and some local ordinances require the merchants to patrol areas and retrieve stolen carts. There may have been some problem with a few merchants not behaving responsibly, but most merchants do use due diligence to keep carts on their property.

**Testimony Against:** Only two cities have passed ordinances on impoundment of abandoned shopping carts. These ordinances were passed only after other attempts to get merchants to be responsible failed. One city sought voluntary compliance for two years. At one point city employees were used to pick up more than 400 carts in a six week period. Only after an ordinance was passed was there a drop in the number of carts being taken off the store's property. Cities should not be spending public money to deal with a private company's litter. A model ordinance could be a good idea, but state exemption would prevent local governments from dealing with local problems.

**Persons Testifying:** (In support) Jason Moulton, Safeway Inc; Bill Young, Marketplace Stores, Inc; David McBride, Quality Food Centers; Ryan Clevenger, Hagggen/TOP Food & Drug; Holly Chisa, Albertsons; and Clif Finch, Washington Food Industry.

(Opposed) Gene Cerino, City of Auburn; Doug Levy, Association of Washington Cities; and Jennifer Henning, City of Renton.

**Persons Signed In To Testify But Not Testifying:** None.